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## **Eighteen Years in the Judicial Catbird Seat**

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Justice James C. Adkins, Leonard K. Samuels, and Paul Hampton Crockett

## **Abstract**

My legal career began with the Florida Supreme Court in September of 1938 as the sole law clerk for the court's six justices.

**KEYWORDS:** catbird, seat, judicial

# Eighteen Years in the Judicial Catbird Seat

Justice James C. Adkins,\* with Leonard K. Samuels\*\* and Paul Hampton Crockett\*\*\*

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## I. Introduction

My legal career began with the Florida Supreme Court in September of 1938 as the sole law clerk for the court's six justices.<sup>1</sup> While I learned much from and enjoyed my clerkship, the experience convinced me that I would never wind up as a Justice of the Florida Supreme Court. The last thing I wanted to be was a judge. It was indeed a long road back to Tallahassee. A long road, but a meaningful and fun one.

The best thing that ever happened to me was getting involved in a general country practice in Gainesville, Florida, beginning in 1941. You learn very quickly that in a small town people want their lawyer to do a little bit of everything. You learn or starve. I don't like the attitude fostered by the Florida Bar these days that a lawyer who is unfamiliar with a certain area of law should decline to represent a client in that area. I became an expert in quite a few areas of law by boning up day and night for three or four days with the lawbooks. I have defended and prosecuted criminal cases, handled divorces, civil negligence cases, real property title work, county bond issues, and represented clients before the Public Service Commission, among other things. My experience allows me to understand where a lawyer is coming from and what he is arguing for. It is an ongoing process; during the last seventeen years on the court I have tried to set out the law for the benefit of the bench and bar just as so many judges and lawyers took the time with me over the course of my legal career to make sure I understood what was going on.

After twenty years of general practice I felt it was time to move on. I remember long ago speaking to a very prominent trial lawyer and asking him how many years of trial practice it would take before I stopped getting those butterflies in my stomach. He replied, "I don't know; I've only been doing this thirty-five years, and Jim, if they ever do go away, I believe it's time to get out of the courtroom." By the mid-sixties, I had been in the courtroom so constantly that the butterflies had gone away, and I knew I wasn't preparing as well as I once had. I had set up the Alachua County Court of Record, and was asked to be its first judge in 1959, but resigned after two years so I could make money as a plaintiff's lawyer in negligence cases. I did, and became a circuit judge in 1964. I was not really thinking of serving on the supreme court, but in the back of my mind I always thought it

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1. Adkins, *Yesterday*, FLA. SUPREME CT. HISTORICAL SOCIETY REV., Fall 1985, at 6.



would be fun to run a state-wide campaign.

While serving as a circuit judge, I had to find some demonstrators in contempt and send them to jail for trying to influence the grand jury. When I refused to set an appeal bond, my house was firebombed. Because of that and my widely-distributed criminal law book<sup>2</sup> I had some state-wide notoriety and was encouraged to run for a seat on the supreme court. During my time on the court I have tried to make what I call "Levy County law," based on Levy County logic. To me, that means down-to-earth and common-sense thinking rather than drifting into legal abstractions. The cases I have chosen to discuss in the article are those which I view as the most significant. I have tried to write opinions so clear, in such plain language, that every judge and lawyer in every small town in Florida could clearly understand every word. That has been my goal.

## II. Moving Tort Law into the Twentieth Century

### A. Access to Courts: The Foundation of Democracy

My decision in *Kluger v. White*<sup>3</sup> is one of my most cited cases. In *Kluger*, the trial court had dismissed the plaintiff's case on the grounds that she fell "between the cracks" of Florida's no-fault insurance law.<sup>4</sup> The trial court held that since she had not chosen to purchase property damage insurance, and had suffered legally recognizable damages of only \$250, the statute left her without recourse in the courts for her damages. I did not like the whole statute, but felt that this particular section violated article I, section 21 of the Florida Constitution, which mandated a policy of access to the courts.<sup>5</sup>

To my mind, the courts fail in a basic task if they fail to provide a forum in which injured citizens can seek redress for their injuries. The statute in question clearly violated that principle, as anyone in Ms. Kluger's position lacked any resource whatsoever. The law was well-

2. J. ADKINS, *FLORIDA CRIMINAL LAW AND PROCEDURE ANNOTATED*.

3. 281 So. 2d 1 (Fla. 1973). See Comment, *No-Fault Property Protection — Legislature's Abrogation of Common Law Tort Right to Recover Property Damage of Less than \$550 Violates Florida Constitution*, 2 FLA. ST. U.L. REV. 178 (1974).

4. *Kluger*, 281 So. 2d at 2. *Kluger* involved the application of FLA. STAT. § 627.738 (1971).

5. Article I, section 21 of the Florida Constitution provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."



settled that whenever the legislature abolished a cause of action, it had to establish an alternative form of protection to the injured party, unless public policy allowed otherwise.<sup>6</sup> In the *Kluger* case, the supreme court sought to balance the legislature's duty to produce laws evolving with society and the courts' duty to ensure a forum protecting the injured. The balance struck was stated as follows:

We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, of where such right has become a part of the common law of the State pursuant to Fla. Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.<sup>7</sup>

Although the decision was a close one,<sup>8</sup> I felt gratified that this plaintiff would, upon remand, be given an opportunity to have her claim determined in court.

#### B. *Equal Rights for All Includes Women*

In the early 1970's, the women's right movement was picking up steam and moving full speed ahead. Coincidentally, in 1971, the court was presented with the question of whether a wife may maintain a cause of action for loss of consortium resulting from injuries to her husband proximately caused by another party.<sup>9</sup> The wife was treading against the common law rule that only a husband, and not a wife, could sue for loss of consortium as a result of injuries to a spouse. Florida law was in accordance with the common law.<sup>10</sup> Consequently both the trial

6. See *Kluger*, 281 So. 2d at 4.

7. *Id.*

8. *Id.* at 5. Justices Adkins, Roberts, Ervin and McCain composed the majority, while Chief Justice Carlton, Justice Dekle and Justice Boyd would have found the statute a proper exercise of the legislature's power. *Id.* at 10.

9. *Gates v. Foley*, 247 So. 2d 40 (Fla. 1971).

10. *Ripley v. Ewell*, 61 So. 2d 420, 421 (Fla. 1952). See also *Wilson v. Redding*, 145 So. 2d 252 (Fla. 2d Dist. Ct. App. 1962).



court and the district court dismissed the wife's complaint.<sup>11</sup> We quashed the decision of the district court of appeal and held that a wife may also maintain a cause of action for loss of consortium.<sup>12</sup> This holding fit in well with my general philosophy that women are entitled to full equality under the law.

Damages for loss of consortium are intended to compensate for the loss of companionship and fellowship of husband or wife and the aid of the other in every conjugal relation.<sup>13</sup> Consortium is far more than sexual relation.<sup>14</sup> Admittedly, it is very difficult to place a monetary value on loss of consortium. I found that out the hard way as a trial lawyer in Ocala, when I got a little carried away in explaining the concept of loss of consortium. Horse breeding is a major industry in Ocala. During closing argument I explained to the jury that "consortium is a nebulous concept, but please bear in mind the stud fees that are paid to race horses." The jury awarded my client a tremendous verdict. My strategy worked a little too well; the judge felt obligated to order a remittitur.

*Gates* presented me with an opportunity to discuss the propriety of a court rejecting outmoded common law doctrines. The common law is at the foundation of American jurisprudence, for which I have great respect. Stability in the law is important, and a court should not reject or alter the common law without good reason. Nevertheless, I believe that a court is obligated to alter the common law when the reason behind the rule is outmoded because of progress in civilization, the rule is court-made, and the rule frustrates justice and deprives people of their right of access to courts. Courts should not hesitate to alter the common law when the original reason for the rule no longer exists. Thus, the law develops as a living and viable forum for justice and does not stagnate into mere ritualistic obeisance to forgotten rules. The common law rule forbidding a wife from suing for loss of consortium, according to my criteria, needed to be abolished.<sup>15</sup>

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11. *Gates v. Foley*, 233 So. 2d 190 (Fla. 4th Dist. Ct. App. 1970).

12. *Gates*, 247 So. 2d at 45.

13. *Id.* at 43.

14. *Id.*

15. In a similar vein, I find it unfortunate that the court has refused to abolish the common law doctrine of interspousal immunity, which prevents a person from suing their spouse in tort. *Raisen v. Raisen*, 379 So. 2d 352 (Fla. 1979), *cert. denied*, 449 U.S. 886 (1980). See also *Snowten v. U.S. Fid. and Guar. Co.*, 475 So. 2d 1211 (Fla. 1985).

In *Raisen*, I coauthored a dissent with Chief Justice England and Justice Sundberg explaining that a majority of jurisdictions have abolished the doctrine of inter-



### C. Comparative Negligence: Why Wait for the Legislature?

*Hoffman v. Jones*,<sup>16</sup> in which the court overturned the doctrine of contributory negligence and adopted that of comparative negligence,<sup>17</sup> is my most widely cited opinion. It is certainly the opinion that I am most proud of and has affected more people than perhaps any decision rendered by the court during my tenure.

*Hoffman* reached this court in an unfortunate procedural setting. In the decision under review,<sup>18</sup> the Fourth District Court of Appeal had overturned well-established Florida Supreme Court precedent by replacing contributory negligence with comparative negligence.<sup>19</sup> Negligence trials became chaotic.<sup>20</sup> Judges were wondering whether the rule of comparative negligence was the law in the Fourth District or throughout the entire state. I was forced to remind the district court that only the Florida Supreme Court may overturn its own precedent.<sup>21</sup> District court judges who disagree with the law as set forth by the Florida Supreme Court are free to express their disagreement with the law and certify a question to us,<sup>22</sup> but must rule in accordance with supreme court precedent.<sup>23</sup> Consequently, *Hoffman* is often cited in district court opinions by judges who wish to stray from supreme court

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spousal immunity and that this court should do likewise because the reasons for the common law rule no longer exist. With the recent resignation of Justice Alderman and the retirement of Justice Boyd, only two justices, Overton and McDonald, are on record in support of retaining the outmoded doctrine of interspousal immunity. I am confident that the Florida Supreme Court will abolish the doctrine of interspousal immunity at the next opportunity.

16. 280 So. 2d 431 (Fla. 1973). See Annot., *Modern Development of Comparative Negligence Doctrine Having Applicability to Negligence Actions Generally*, 78 A.L.R.3d 339 (1977).

17. *Hoffman*, 280 So. 2d at 438. Contributory negligence bars recovery for a negligent plaintiff, while comparative negligence merely takes such negligence into consideration by proportionally reducing the damages which the plaintiff may recover. *Id.* at 436.

18. *Jones v. Hoffman*, 272 So. 2d 529 (Fla. 4th Dist. Ct. App. 1973).

19. *Id.* at 533. Contributory negligence was the law in Florida. See *Hoffman*, 280 So. 2d at 433 (citing *Louisville and Nashville Railroad Co. v. Yniestra*, 21 Fla. 700 (1886)).

20. *Hoffman*, 280 So. 2d at 436.

21. *Id.* at 434. Judge Gerald Mager, a good friend of mine, authored the decision under review and we still joke about the stinging reminder I gave him in *Hoffman*.

22. FLA. CONST. art. V, § 3(b)(4). See *Hoffman*, 280 So. 2d at 434.

23. *Hoffman*, 280 So. 2d at 434.



precedent but realize that only the supreme court itself may do so.<sup>24</sup>

The most difficult question in *Hoffman* was whether the court was empowered with the authority to replace the common law rule of contributory negligence with comparative negligence. My initial reaction was that the rule of comparative negligence could be established only by the legislature.<sup>25</sup> However, the more I researched the issue, and the more old English decisions I read discussing contributory negligence, the more convinced I became that the court was empowered and in fact obligated to abolish the common law rule of contributory negligence.<sup>26</sup> Contributory negligence, after all, was initially created by the courts,<sup>27</sup> the justifications for the theory had vanished,<sup>28</sup> and the doctrine fostered unjust results.<sup>29</sup>

From a practical standpoint the adoption of comparative negligence in Florida has greatly enhanced the administration of justice. The major problem with contributory negligence was that it virtually halted all forms of settlement. In a typical negligence case, the insurance company would dig until they found something the plaintiff had done wrong, no matter how minor, and then end all settlement negotiations. The adoption of comparative negligence has therefore enhanced settlement. Another problem with contributory negligence lay in the jury's routine practice of ignoring a plaintiff's negligence and allowing a contributorily negligent party to recover.<sup>30</sup> The adoption of comparative negligence has allowed the jury to at once abide by the law and do justice.

24. See, e.g., *McPhail v. Jenkins*, 382 So. 2d 1329, 1330 (Fla. 1st Dist. Ct. App. 1980), review denied, 388 So. 2d 1115 (Fla. 1980); *Iley v. Harris*, 339 So. 2d 290, 292 (Fla. 2d Dist. Ct. App. 1976), *aff'd*, 345 So. 2d 336 (Fla. 1977).

25. See *Hoffman*, 280 So. 2d at 440-43 (Roberts, J., dissenting). Other courts have refused to abolish contributory negligence in the absence of an express statutory provision providing for comparative negligence. See, e.g., *Baab v. Shockling*, 61 Ohio St. 2d 55, 15 Ohio Op. 3d 82, 399 N.E.2d 87 (1980).

26. Other courts have also adopted comparative negligence in the absence of legislative action. See, e.g., *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975); *Kaatz v. State*, 540 P.2d 1037 (Alaska 1975).

27. *Hoffman*, 280 So. 2d at 434 (citing *Butterfield v. Forrester*, 103 Eng. Rep. 926 (K.B. 1809)).

28. *Hoffman*, 280 So. 2d at 437. Contributory negligence was adopted to protect industry. Modern society requires protection of individuals rather than industry. *Id.*

29. *Id.*

30. *Id.* (quoting Maloney, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. FLA. L. REV. 135, 151-52 (1958)).



### D. *West and Strict Liability in Tort*

I may have put my greatest effort into writing the decision of *West v. Caterpillar Tractor Co.*,<sup>31</sup> in which we adopted the doctrine of strict liability in tort<sup>32</sup> as Florida law. Although the case was a labor of love, it presented some very difficult questions, and resolution of the issues raised involved a reconciliation of quite a bit of inconsistent case law. A showing of privity had historically been required in products liability cases. Florida's courts had strained so long in so many different ways to allow recovery for damages in the absence of privity that this court was left with a mess to clean up. As noted in *West*, "[t]hese theories of recovery have been refined and consolidated to such an extent that the distinctions frequently have more theoretical than practical significance."<sup>33</sup> In fact, the task before the court could be linked to a cleaning of the Aegean stables. The case took quite a while to research and draft; it was originally assigned to another justice in May of 1975 while I was Chief Justice.<sup>34</sup> I finally took the case when the others had reached a standstill on it, and by the time the opinion was issued on July 21, 1976, I was no longer Chief Justice.

But a real problem was presented by the case. Injured plaintiffs in Florida faced great difficulty in establishing their cases against manufacturers. Consequently, manufacturers had no true incentive to make products safe, and retail and wholesale distributors bore the brunt of the litigation. The issues presented in *West* intrigued me, because I had been involved in such litigation before I became a judge. If you bought something and loaned it to someone, there was no privity between the person you loaned it to and the manufacturer. That was the general law, but the courts had begun to stretch the theory of privity beyond recognition in order to allow the plaintiffs to sue.

One of the products liability cases I handled as an attorney involved an electric blanket. The man who had bought it shortly thereafter found that he had to enter the service, so he gave it to his sister. She used it one night, and then gave it to a friend. The blanket then malfunctioned and burned the lady very badly. She came to me and

31. 336 So. 2d 80 (Fla. 1976). See also Murray, *Commercial Law*, 31 U. MIAMI L. REV. 895, 898 (1977).

32. *West*, 336 So. 2d at 87. See RESTATEMENT (SECOND) OF TORTS § 402 A (1965).

33. *West*, 336 So. 2d at 84.

34. Justice Adkins served as Chief Justice from March 1, 1974, to February 28, 1976.



wanted to sue, but how in the world could I find privity between Sears, Roebuck Company and the ultimate injured user? I finally had to settle. The amount was much smaller than I would have gotten in a jury verdict. As I explained it to the Sears lawyer, I would just have to take a chance that the supreme court would stretch that privity. The court seemed to look at each situation and extended the privity rule if they felt someone ought to recover. I told that lawyer, "You have to face the possibility that the court will do that, because if I get to court I'm gonna get one hell of a big verdict." We finally got a pretty fair settlement; my client was satisfied even if I was not.

That is why I was especially interested in this case; I did not want to see others caught in the same situation. I am very proud of the decision because it has held up, in spite of some minor attacks.<sup>35</sup> I also felt it was important to resolve the questions raised in the case "head on," because bad law results when the courts must stretch the law in order to reach a just result. Privity is privity, and you ought not to extend it or make exceptions to it as long as the requirement is to be made at all in a case. I believe clear rules, set out for the benefit of the bench and bar, are much preferable to decisions based on a judge's feeling on a particular case. That is why I do not like the harmless error rule to be applied so as to muddy the waters of clear constitutional rights such as the right of the accused to keep silent.<sup>36</sup>

I recall the election case of *Boardman v. Esteve*,<sup>37</sup> for example, as one in which applicable principles of law desperately needed to be set out. I attempted to set forth in that opinion reasonably clear standards by which trial courts could evaluate the validity of challenged absentee ballots.<sup>38</sup> Prior to the opinion, the law could be twisted so as to reach any result.<sup>39</sup> This was dangerous because, frankly, the law was so messed up that the supreme court could make its ruling on validity or invalidity of the ballots depending on whom the justices wanted to see in office. Similarly, the adoption of strict liability in tort in *West* allowed the courts to stop straining the concept of privity in seat-of-the-pants decisions in order to do justice. I have never believed that courts ought to be able to sit back and decide cases without any basis but

35. See *Edward M. Chadbourne, Inc. v. Vaughn*, 491 So. 2d 551, 554 (Fla. 1986) (Adkins, J., dissenting).

36. See *infra* notes 52-60 and accompanying text.

37. 323 So. 2d 259 (Fla. 1975).

38. *Id.* at 269.

39. *Id.* at 270 (Overton, J., concurring).



their own feelings.

### E. *The Impact of the "Impact Rule"*

My dissent in *Gilliam v. Stewart*<sup>40</sup> illustrates my strong faith in the jury's ability to distinguish between injuries crying out for compensation and efforts to flim-flam the jury. The case came up in 1974, when Justice Drew was on the court. He was a strong believer in the "impact rule." The rule prohibited plaintiffs from recovering damages for the physical consequences of a mental or an emotional disturbance caused by a negligent act, in the absence of physical impact.<sup>41</sup> I took the position that actual touching was not necessary. *Gilliam* was an interesting case, in which a woman laying in bed heard one of the cars involved in a collision strike a tree in her yard and the other crash against her home.<sup>42</sup> Within fifteen minutes after the incident, she went back to bed with chest pains.<sup>43</sup> Two hours later, she entered the intensive care unit of a nearby hospital.<sup>44</sup> The woman was diagnosed as having had a heart attack, which eventually led her to suffer a stroke.<sup>45</sup> Although her physician testified that her injuries resulted from the fright she experienced upon the car's impact on the house, the trial court granted summary judgment based on a lack of physical impact.<sup>46</sup> The Fourth District, citing my observation in *Gates v. Foley*<sup>47</sup> that "the law is not static . . . [and] must keep pace with changes in society,"<sup>48</sup> rejected the impact rule.

I felt that this was the kind of situation where we should allow recovery even in the absence of impact, and then I got into researching it. After examining the common law, I determined that we were dealing with a court-made rule and that we ought to recede from it. While I felt that appropriate limitations could be put on the cause of action,

40. 291 So. 2d 593 (Fla. 1974).

41. See Comment, *Negligent Infliction of Emotional Distress — Should the Florida Supreme Court Replace the Impact Rule with a Foreseeability Analysis?*, 11 FLA. STA. U.L. REV. 229, 232 (1983).

42. *Stewart v. Gilliam*, 271 So. 2d 466, 467 (Fla. 4th Dist. Ct. App. 1972).

43. *Id.*

44. *Id.* at 468.

45. *Id.*

46. *Id.*

47. *Id.* at 471 (quoting *Gates v. Foley*, 247 So. 2d 40, 43 (Fla. 1971)). See *supra* notes 9-15 and accompanying text.

48. *Id.*



and set these out in my dissent,<sup>49</sup> the majority of the court could not agree with me and sat solid on the necessity of impact. I felt that the cause of action should be recognized so that justice could be done instead of ruling people out on bare technicalities. It seemed odd to me that if even one brick had touched the plaintiff she could have recovered. Still, only Justices McCain and Ervin joined in my dissent.

Today things are getting a little bit better; people are beginning to understand that these injuries should not go without compensation and that proper limitations can be put on those seeking to recover. Twelve years later we have partially receded from the historical impact rule,<sup>50</sup> and I believe that eventually the rule will be completely done away with.<sup>51</sup> The jury has been and will remain the best evaluator of damages in these situations.

### III. Crime and Punishment

#### A. *The Harmful Effect of Harmless Error*

No right of individuals is more important to society than the right of an accused to be tried before an impartial tribunal in accordance with full due process of law.<sup>52</sup> Citizens must remember that a person is not a criminal until he is convicted in accordance with the rules. Unfortunately, in certain instances a person who committed a crime will walk free because, under the rules, the prosecutor could not get a conviction. Our system of justice is not flawless. However, if we disregard those fundamental rules of court which are guaranteed by the Constitution of the United States simply to convict an accused criminal, we risk allowing law enforcement officers to sweep up all of humanity and then to determine in their discretion who goes to jail and who goes home. As a justice of the Florida Supreme Court, I have worked diligently to ensure fair prosecution as opposed to persecution of the accused.

It is with these principles in mind that I developed my opinion that a prosecutor's comment on a defendant's right to remain silent or failure to testify always constitutes reversible error. While I was a research

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49. Gilliam, 291 So. 2d at 596. See also Comment, *Outmoded Impact Rule Retained by Florida*, 28 U. MIAMI L. REV. 705, 708-09 (1974).

50. *Champion v. Gray*, 478 So. 2d 17 (Fla. 1985); *Brown v. Cadillac Motor Car Division*, 468 So. 2d 903 (Fla. 1985). See Adkins, *supra* note 2.

51. *Champion*, 478 So. 2d at 21 (Adkins, J., concurring).

52. FLA. CONST. art. I, § 9. Due process is guaranteed by the fifth amendment to the United States Constitution and article I, Section 9 of the Florida Constitution.



assistant at the Florida Supreme Court in 1939, I worked on an opinion which the court rendered in *Simmons v. State*.<sup>53</sup> That decision held that a prosecutor's comment on a defendant's failure to testify constitutes *per se* reversible error. Unfortunately, twenty-eight years later, in *State v. Hines*,<sup>54</sup> the court overruled *Simmons* and held that a comment on the defendant's failure to testify may constitute harmless error and not warrant a new trial.<sup>55</sup>

The issue arose again in *Willinsky v. State*,<sup>56</sup> and I authored an opinion which receded from *Hines* and reaffirmed the rule in *Simmons*.<sup>57</sup> Unfortunately, in *Clark v. State*,<sup>58</sup> over my strong dissent, the court held that a contemporary objection is required in order to attack,

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53. 139 Fla. 645, 190 So. 756 (1939). Justice Adkins recounts his early involvement with the case as follows:

[Justice James Whitfield] asked me to write a memorandum affirming a conviction for rape. After reading the testimony I had real doubt about the defendant's guilt and decided to discuss it with Justice Whitfield. He was in the rocking chair. When I entered he laid the yellow pad on his desk and put on his glasses. He never wore them while writing.

"Judge, there are some peculiar things in the record," I said, "and this man's guilt has not been proved. For example, she said he dragged her across the grass, but there were no grass stains or dirt on her clothes."

He smiled pleasantly and said, "The jury heard the facts, James, and found him guilty." Calling me "James" was in keeping with his air of stateliness and made me feel more important.

After checking the record again, I returned to his office. "Judge," I said, "this woman was sitting on the front seat of the automobile with the defendant when he stopped at a restaurant and went inside, leaving her alone. If she was in fear, she could have escaped. I just don't think he did it."

Once again he gave me a pleasant smile, but spoke with a more positive tone. "The jury decides the facts, James."

The third time, I said "Judge, I hate to bring this case back to you again, but the prosecutor commented on the failure of the defendant to testify at a *habeas corpus* hearing. That is reversible error."

This time he did not move the pad or put on the glasses, nor did he smile. Speaking in a soft tone, he said, "the defendant has been a naughty boy, James, but we will give him another chance. Fix a memorandum reversing the judgment."

Adkins, *supra* note 1, at 8.

54. 195 So. 2d 550 (Fla. 1967).

55. *Id.* at 551.

56. 360 So. 2d 760 (Fla. 1978).

57. *Id.* at 765.

58. 363 So. 2d 331 (Fla. 1978).



on appeal, the impropriety of a prosecutor's comment on the defendant's right to remain silent at the time of arrest.<sup>59</sup> In another step backwards, this court recently held that a comment on the defendant's right to remain silent or failure to testify is subject to the reversible error rule and does not constitute *per se* reversible error.<sup>60</sup> Thus, the court has now accepted *Hines* and rejected *Simmons* and *Willinsky*. Nevertheless, I remain confident that the court will once again return to the better rule set forth in those areas.

Application of the harmless error rule to a comment on a defendant's failure to testify or right to remain silent is tragic for two reasons. First, the harmless error rule invites overzealous prosecutors to make prejudicial comments. When I was a practicing attorney the *per se* reversible rule was in effect, everyone knew the ground rules, and very few comments were ever made. Second, the harmless error analysis invites numerous appeals. In all of these appeals, the appellate courts will ultimately decide that the error was harmless if they want the defendant to go to prison and harmful if they want the defendant to walk. Appellate law will become increasingly full of inconsistencies as courts attempt to apply the harmless error analysis to the forthcoming flood of cases.

## B. *Dixon: Bringing the Death Penalty Back to Life*

In *Furman v. Georgia*,<sup>61</sup> the United States Supreme Court struck down the death penalty in several states.<sup>62</sup> Consequently, the death penalty in Florida was non-existent.<sup>63</sup> However, *Furman* did not abolish capital punishment *per se*.<sup>64</sup> Immediately following *Furman*, the Florida Legislature enacted a new death penalty with the hope that it would pass constitutional muster under *Furman*.<sup>65</sup> In *State v. Dixon*<sup>66</sup>

59. *Id.* at 335.

60. *State v. DiGuilio*, 11 FLA. LAW WEEKLY 339 (Fla. July 18, 1986), No. 65,490. For an in depth analysis on the harmless error rule see DeFoor and Braccialarghe, *Florida Reverses its Per Se Reversal Rule on Improper Prosecutorial Comment on a Defendant's Rights to Remain Silent*, 13 FLA. ST. U.L. REV. 1119 (1986).

61. 408 U.S. 238 (1972).

62. *Id.* at 256-57.

63. *Donaldson v. Sack*, 265 So. 2d 499 (Fla. 1972).

64. *Furman*, 408 U.S. at 257. Only Justices Brennan and Marshall expressed the view that the death penalty is unconstitutional under all circumstances.

65. FLA. STAT. § 921.141 (1972).

66. 283 So. 2d 1 (Fla. 1973), *cert. denied*, 416 U.S. 943 (1974).



we were asked to decide whether that death penalty statute was constitutional.

I spent many sleepless nights pondering the various arguments raised by the numerous parties challenging the validity of capital punishment. *Furman* had failed to clearly enunciate the requisites of a constitutionally valid capital sentencing scheme<sup>67</sup> and the total lack of precedent made our job all the more difficult. This lack of guidelines, coupled with the fact that the majority of the court, myself included, favored capital punishment, allowed us to uphold the statute. I became convinced that the legislature had drafted a constitutional death penalty statute and authored a majority opinion so stating.

Florida's death penalty statute requires the jury and judge to weigh relevant aggravating and mitigating factors and then decide whether the death sentence is appropriate.<sup>68</sup> In *Dixon* we stated that "[w]hen one or more of the aggravating circumstances is found, death is presumed to be the proper sentence unless it or they are overridden by one or more of the mitigating circumstances. . . ."<sup>69</sup> I had to fight hard to keep this interpretation of the statute in the opinion and I am thankful that this is still the law. As a result, the judge and jury must now make a reasoned evaluation of all the circumstances surrounding the case rather than merely adding and subtracting aggravating and mitigating circumstances.<sup>70</sup>

I support capital punishment because it is a deterrent to future murders. I do not mean a deterrence in the traditional sense. If a man is going to commit a murder, I don't think he is going to think about the chair and then decide not to carry out the act. However, capital punishment is a strong deterrent to the individual who is electrocuted. Many killers have "murder in their heart," as country people used to say, and would enjoy murdering again. Electrocution prevents these people from murdering again, whether the next victim would be an ordinary citizen or a fellow inmate. There is nothing better to do with these people than execute them. After all, as I learned while growing up, rattlesnakes should be killed and not kept as pets.

Admittedly, the system is far from perfect. It is far too complex and we are not getting the results that we would like. Not enough peo-

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67. *Furman*, 408 U.S. at 238. Five justices formed a majority in *Furman*. All nine justices authored separate opinions.

68. FLA. STAT. § 921.141 (1972).

69. *Dixon*, 283 So. 2d at 9.

70. *Id.* at 10.



ple sentenced to death have been executed. Even opponents of the death penalty agree that if we are going to have the death penalty, inmates should not sit on death row for ten or more years. The rush of last minute appeals and stays of execution has become very frustrating. I must qualify this by adding that I am not at all frustrated by defense attorneys pulling every angle they can to save a man from the chair. I am proud to say that in all my years defending people I never lost anyone to the chair. I can't blame attorneys for doing whatever it takes to match my record. However, I am extremely frustrated by the great number of last minute stays of execution entered by the federal courts.

This frustration stems from the fact that the United States Supreme Court and other federal courts have failed to clearly delineate federal constitutional rights in relation to capital punishment. Federal courts are constantly changing the rules, keeping other federal courts and state courts in a state of perpetual uncertainty. Of course, no one should be executed until all available remedies have been exhausted. Florida law so provides. The federal courts can learn a lot by looking at Florida law, which sets out for everyone what the rules are.

#### IV. Separation of Powers

##### A. *Apportionment: The Legislature Knows Best*

It was a privilege to author *In re Apportionment Law*,<sup>71</sup> which upheld the validity of the legislative reapportionment plan of 1972 for a number of reasons. First and foremost among these reasons is that the decision straightened out the law on reapportionment, which had previously been a nightmare. Every attempt the Florida Legislature made at reapportioning itself between 1955 and 1966 was invalidated by the federal judiciary.<sup>72</sup> As a result, the Federal District Court for the

71. 263 So. 2d 797 (Fla. 1972).

72. In *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla. 1962), the court held that the then existing provisions of the Florida Constitution and statutory provisions pertaining to legislative apportionment were invidiously discriminatory. Nevertheless, the case was continued to permit the state to come up with a valid reapportionment plan prior to the convening of the regular legislative session in 1963. The legislature met in special session in August of 1962 and drafted a proposed constitutional amendment to be submitted to the voters in the November, 1962, election. In a supplemental opinion dated September 5, 1962, and found at 208 F. Supp. 316, the United States District Court for the Southern District of Florida held that the proposed constitutional amendment as well as the two statutes enacted to implement the proposed amendment would allow the Florida Legislature to reapportion itself in accordance with the United States



Southern District of Florida was forced to judicially reapportion the Florida Legislature in 1967.<sup>73</sup> Needless to say, prior to our 1972 decision the law regarding reapportionment in Florida was in total chaos.

The 1972 reapportionment plan presented this court with a golden opportunity to clarify the law on reapportionment in Florida. I am proud to say that my opinion approving the 1972 reapportionment plan did just that. For the first time, we took the bull by the horns and set out the proper rules and procedures for future legislatures to follow when reapportionment time comes around. Consequently, our decision approving the legislative reapportionment plan of 1982 was relatively

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Constitution. The court retained jurisdiction, however, in the event that the proposed constitutional amendment was rejected.

The proposed constitutional amendment was rejected by the voters on November 6, 1962. The Florida Supreme Court then advised the Governor that he had the power to call recurring extra sessions of the legislature until the legislature enacted a reapportionment plan which conformed with the fourteenth amendment to the United States Constitution. *In re Advisory Opinion to the Governor*, 150 So. 2d 721 (Fla. 1963).

The Florida Legislature devised another reapportionment scheme in yet another special session, and the Governor signed the law on February 4, 1963. The district court upheld the validity of this reapportionment scheme. *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla. 1963). The United States Supreme Court reversed, and remanded the case for further proceedings in light of *Reynolds v. Sims*, 377 U.S. 533 (1964), and other cases relating to state legislative apportionment. *Swann v. Adams*, 378 U.S. 553 (1964).

In 1965, a special session of the Florida Legislature passed a statute relating to apportionment. Once again, a federal court held that an apportionment plan devised by the Florida Legislature did not meet the requirements of the equal protection clause of the federal constitution. *Swann v. Adams*, 258 F. Supp. 819 (S.D. Fla. 1965). Nevertheless, the court modified the plan presented by the legislature and approved the modified plan of apportionment as an interim plan for a period ending sixty days after the adjournment of the 1967 legislative session. The United States Supreme Court reversed the district court's decision to approve the modified plan of reapportionment on an interim basis and remanded the cause to the district court. *Swann v. Adams*, 382 U.S. 210 (1966).

The Florida Legislators passed another reapportionment plan during a special session commenced in March, 1966. Upon remand, and in a supplemental opinion also found at 258 F. Supp. 819 (1965), the United States District Court for the Southern District of Florida held that the reapportionment plan of March 1966 met federal constitutional standards. The United States Supreme Court once again reversed the district court and found the March 1966 reapportionment plan unconstitutional. *Swann v. Adams*, 385 U.S. 440 (1967). A final attempt by the Florida Legislature to reapportion itself was declared unconstitutional and the federal district court was forced to judicially apportion the Florida Legislature. *Swann v. Adams*, 263 F. Supp. 225 (S.D. Fla. 1967).

73. *Swann*, 263 F. Supp. at 225.



simple and noncontroversial.<sup>74</sup>

The 1972 reapportionment decision provided the perfect forum for me to espouse my strong belief in the doctrine of separation of powers.<sup>75</sup> The plan was far from perfect. For example, the reapportionment plan provided for several multi-member districts, which I personally find repulsive. Nevertheless, my philosophy is that reapportionment is a legislative program and that we should abide by the wishes of the legislature unless these wishes are in flagrant violation of the United States Constitution.

A few of my brethren did not share my strong beliefs in the doctrine of separation of powers. In fact, certain members of the court had already begun drafting their own reapportionment program prior to our approval of the legislature's plan.<sup>76</sup> These justices decided that the best thing to do was let the court reapportion the legislature. That was the last project I wanted to undertake.

When I first became a justice on the Florida Supreme Court, I was frightened with the power I possessed. We can go far in taking power away from the other two branches of government and get away with it. For that very reason, courts must exercise restraint and fully recognize the authority of the other coordinate branches of government.<sup>77</sup> I am equally adamant about an independent judiciary. When members of the legislature or governor's office stepped over here and put their foot on us while I was chief justice, they didn't keep it over here very long.

## V. The Challenges of Life in a Modern Society

### A. *Lieberman: Seeking a Balance Between Peace and Dissent*

I was new on the court when presented with *Lieberman v. Marshall*,<sup>78</sup> and that is probably why the opinion is so long. It was an excit-

74. *In re Apportionment Law*, 414 So. 2d 1040 (Fla. 1982), appearing as Senate Joint Resolution 7E, 1982 Special Apportionment Session: Constitutionality Vel Non.

75. Following the jurisdictional statement, the opinion begins as follows: "At the outset, we emphasize that legislative reapportionment is primarily a matter for legislative consideration and determination." *In re Apportionment Law*, 263 So. 2d at 799-800.

76. The Florida Supreme Court may reapportion the legislature under certain circumstances. FLA. CONST. art. III, § 16(f).

77. See *Harden v. Garrett*, 483 So. 2d 409 (Fla. 1985).

78. 236 So. 2d 120 (Fla. 1970). See Comment, *University Regulation of Students: An Uncompleted Exercise in Constitutional Law*, 25 U. MIAMI L. REV. 515



ing case, arriving during the aftermath of the campus demonstrations which were occurring all over the nation. The president of Florida State University had secured an *ex parte* restraining order to prevent an occupation of part of the student union by the campus chapter of the radical organization, Students for a Democratic Society (SDS). After the trial court denied the students' motion to dissolve the temporary injunction, the students appealed that decision to the Florida Supreme Court. The SDS, headed by Jack Lieberman, the nominal party representing the students, had raised so much hell that then-sheriff Hamlin had his deputies place bayonets on their rifles and had them out there "keeping order."

The case was an important one. The university had established, to the trial court's satisfaction, the possibility of violence if the SDS were allowed to occupy the student union. It was our task to resolve the question in such a manner as to avoid violence without depriving the students of their constitutional rights of free speech and association. We found the injunction valid under the circumstances of the case, in light of the traditional deference paid to school administrators in conducting academic affairs, the threat of disruption and possible violence raised by the rally, and the availability of the school grounds rather than buildings for the protests. Fortunately, after we set up the rules here we never had any more trouble with the campuses. The whole purpose of the opinion was to let people know where they stood in this respect. Although it didn't appear in the record, I knew about the bayonet business and that these old country sheriffs were almost at the point of killing these students.

I wrote this opinion to draw the line on how far the protesters could go.<sup>79</sup> I am a firm believer in dissent; I don't think we can exist without it.<sup>80</sup> In fact, I have recently expressed concern that nobody dissents anymore, and that people too readily resign themselves to the status quo.

## B. *The Sunshine Law in the Sunshine State*

I had great fun with the "Sunshine Law"<sup>81</sup> cases. I have always

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(1971).

79. Lieberman, 236 So. 2d at 123-24, setting out the four factors constituting the clear and present danger test.

80. See *id.* at 128.

81. FLA. STAT. § 286.011 (1985).



been a great believer that better government results when public officials know that their performances will be scrutinized by the public, and have never seen any reason why meetings should not be conducted "in the sunshine." During the years that I practiced law, it was a common policy of all city commissions to have secret meetings just before the groups convened for their formal meetings. Every board seemed to have a couple of people on it who were educated and sharp, but each also seemed to have a couple that were just plain dumb. Through these secret meetings the more capable commissioners were able to educate the others and reach a real agreement prior to the formal meeting. Before the sunshine law, all that was necessary was to conduct the final vote in public.<sup>82</sup> Surprisingly, history and tradition established no basic requirement that government in this country be conducted in the open. In colonial days, everything was secret. It was my aim, when deciding these cases, to allow the public to determine which officials were qualified and which were being "educated" in secret meetings held before open voting procedures.

In *Board of Public Instruction v. Doran*,<sup>83</sup> we affirmed the statute's constitutional validity and determined that it contained sufficient standards to put public officials on notice of what behavior was proscribed. I felt it important to interpret the statute, enacted for the public benefit, in a manner most favorable to the public. Accordingly, we departed from Florida's historical narrow reading of "public meetings"<sup>84</sup> and determined that the legislature's "obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board."<sup>85</sup>

During the course of writing that opinion, I told my secretary that I was dictating one paragraph for the benefit of the press. That's probably the most quoted paragraph I have ever written. It reads:

The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During past years tendencies towards secrecy in public affairs have been the subject of extensive criticism.

82. See *Turk v. Richard*, 47 So. 2d 543 (Fla. 1950) (citing FLA. STAT. § 165.20 (1941)).

83. 224 So. 2d 693 (Fla. 1969).

84. In *Turk*, the court defined "'all meetings' to have reference only to such formal assemblages of the council . . . as we were required to hold for the transaction of official municipal business." 47 So. 2d at 544 (emphasis added).

85. *Doran*, 224 So. 2d at 698.



Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with "hanky panky" in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.<sup>86</sup>

They loved that "hanky panky" line. I also inserted into that paragraph referring to the people's "inalienable right" to be present and attend these hearings. No one noticed until years later that I had raised this right almost to the level of a constitutional right.

In *City of Miami Beach v. Berns*,<sup>87</sup> we reaffirmed the statute's application to informal as well as formal meetings. After that decision — in which we noted that "[i]t is the law's intent that any meeting, relating to any matter on which foreseeable action will be taken, occur openly and publicly"<sup>88</sup> — one of the city attorneys arguing the case told the *Miami Herald* in an interview that he had advised his city commissioners to go to the bathroom separately rather than together so that no communication could take place. There was a great deal of resistance to these cases until people got used to the law and realized that public meetings were not so bad. The requirements only applied to business arising in the foreseeable future; officials were not prohibited from discussing speculative future projects.

Some time after I had worked on the *Doran* and *Berns* decisions, Governor Askew caught me at some reception and just chewed me out terribly. I told him that he didn't have to pay any attention to the Sunshine Law, as the legislature lacked power to require openness in the executive branch and could not tell him what to do. The next time he came up to me, he told me his wife had mentioned that he had been awfully hard on me at that reception, and apologized. I turned to his wife, and said to her, "Don't you ever worry, your husband can say whatever he wants to about me but just remember one thing — I always have the last say." We all laughed as I walked away.

Although the legislature could not impose openness on the courts, I would like to see this court subject to the Sunshine Law, and once

86. *Id.* at 699.

87. 245 So. 2d 38 (Fla. 1971).

88. *Id.* at 41.



made a motion that we open up all aspects of our conferences to the public eye except discussions of pending cases. I still advocate that position.

Our later decision of *Town of Palm Beach v. Gradison*<sup>89</sup> illustrated my philosophy that no matter how smart public officials may think they are, they can always benefit from the input of the public that it is their duty to serve. I have repeatedly insisted that any exemptions to the Sunshine Law be provided by the legislature and not the courts.<sup>90</sup>

More recently, I have found myself dissenting to the court's narrow interpretations of the Sunshine Law.<sup>91</sup> The case of *Tolar v. School Board of Liberty County*<sup>92</sup> especially disappointed me; the makeup of the court had changed again and had basically returned to the old rule of merely requiring the final votes to be in public. That was the very thing that the Sunshine Law was originally meant to overcome. I think generally, though, that this court raised so much hell with public officials at the beginning that most municipal and county areas hold open meetings on everything. As I wrote, though, I thought that *Tolar* represented a sad day, when "the bright rays of the sunshine law have not been dimmed, they have been obliterated."<sup>93</sup> The opinion destroyed everything that had been done. The majority's observation that the initial secret discussions were "rendered 'sunshine bright' by the corrective open, public vote which followed,"<sup>94</sup> I felt, flatly conflicted with our earlier observation in *Berns* that "[a]n informal conference or caucus of any two or more members permits crystallization of secret decisions to a point just short of ceremonial acceptance."<sup>95</sup> Ceremonial acceptance alone should not satisfy the Sunshine Law; I don't think the court will stay with that particular opinion.

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89. 296 So. 2d 473 (Fla. 1974).

90. See, e.g., *Doran*, 224 So. 2d at 699; *Berns*, 245 So. 2d at 41.

91. *Tolar v. School Bd. of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981) (Adkins, J., dissenting); *Occidental Chem. Co. v. Mayo*, 351 So. 2d 336, 343 (Fla. 1977) (Adkins, J., dissenting). See *Tolar*, 398 So. 2d at 429 (England, J., concurring) ("Justice Adkins remains the strong judicial voice in Florida in support of an unadulterated Sunshine Law.")

92. 398 So. 2d 427 (Fla. 1981).

93. *Id.* at 432.

94. *Id.* at 429 (quoting *Basset v. Braddock*, 262 So. 2d 425, 428-29 (Fla. 1972)).

95. *Berns*, 245 So. 2d at 41.



### C. Defining the People's Right to be Let Alone

*Winfield v. Division of Pari-Mutuel Wagering*<sup>96</sup> may be one of the most important cases I have worked on during my tenure, because in my view the case boils down to the basic and crucial question of whether the individual is to be properly protected from the overwhelming power of the state. Another case had come before the court earlier raising the right of privacy set forth in article I, section 23 of the Florida Constitution<sup>97</sup> in a rent control case. An opinion was drafted in which the court engaged in a balancing test between the state's police power and the individual's right to privacy. The court planned to utilize the right of privacy established in federal jurisprudence, which did not require a compelling state interest before interfering with an individual's right to privacy.<sup>98</sup> I felt it was this court's duty to provide a greater degree of protection to the individual under our state constitution. So I raised a real ruckus and held up the case for a long time, and they finally agreed to release the case only after all references to Florida's right of privacy had been removed.

I felt that Florida's privacy amendment would mean nothing unless the court went the route of requiring a compelling state interest prior to allowing the state to intrude upon an individual's privacy, and ensuring that the state accomplished its goal through the use of the least intrusive means possible.<sup>99</sup> When *Winfield* came along, I finally got an opportunity to establish these standards, and surprisingly got a majority of the court to go along with me. The United States Supreme Court had made clear that "the protection of a person's general right to privacy — his right to be let alone by other people — is, like the

96. 477 So. 2d 544 (Fla. 1985).

97. The section provides as follows: "Right of privacy — Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." FLA. CONST. art. I § 23. See Cope, *To Be Let Alone: Florida's Proposed Right of Privacy*, 6 FLA. ST. U.L. REV. 671 (1978).

98. Compare *United States v. Miller*, 425 U.S. 435 (1976) (The United States Supreme Court held that bank records did not fall within a protected zone of privacy and were not private papers protected by the fourth amendment); with *Roe v. Wade*, 410 U.S. 113 (1973) (which held that a compelling state interest is required before interfering with an individual's right to privacy).

99. *Winfield*, 477 So. 2d at 547. See Cope, *supra* note 97, at 744. "The most important single issue in the interpretation of the proposed privacy right is a technical one: what standard of review will be applied by Florida courts in construing it?" *Id.*



protection of his property and of his very life, left largely to the law of the individual states."<sup>100</sup> I felt it to be this court's duty to do so in the strongest of terms.

Today, when politicians are trumpeting "law and order" and various authorities are wielding unprecedented power, I believe that it is important to ensure that every single "little guy" receives more protection than ever. I was raised with the belief that the greatest thing about this country was that the smallest, most significant citizen had the same rights as the president, to approach his congressman, or to petition the supreme court, or, in short, to make a difference. I feel that as time has passed we have headed more and more towards the "herd mentality," where the majority rules and the minority is either despised or ignored. But this country has survived on the idea that each individual is pretty damn important and has the right to be left alone. That's a basic element of my philosophy.

My views on privacy, I believe, have at times led me to differ from the majority of the court. I find it essential to accord judicial protection to that zone of privacy surrounding adult citizens' homes which is so essential to our individual and collective dignity and quality of life. In attempting to breathe life into the observation that "the right to be let alone [is] the most comprehensive of rights and the right most valued by civilized men,"<sup>101</sup> I have argued that adults should be allowed to possess and use marijuana within the home,<sup>102</sup> and that an adult who chooses to purchase pornography should be able to do so.<sup>103</sup> I realize that these are serious issues, but I also take very seriously each individual's right to conduct his own life in his own way, as long as he is not harming anyone else. Laws infringing on a person's zone of privacy, in my estimation, do far more real damage to society as a whole than an individual who chooses to relax with marijuana rather than alcohol after a hard day at work.

My views on privacy are not inconsistent with my approach to government in the sunshine. While I respect the rights of public officials as individuals, when individuals become public officials and act as such

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100. *Winfield*, 477 So. 2d at 547 (quoting *Katz v. United States*, 389 U.S. 347, 350-51 (1967) (Court urged to recognize right to privacy in papers revealing private aspects of public officials)). See *Cope*, *supra* note 97, at 699-703.

101. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), quoted in *Winfield*, 477 So. 2d at 546.

102. *Laird v. State*, 342 So. 2d 962, 966 (Fla. 1977) (Adkins, J., dissenting). See *Bourassa v. State*, 366 So. 2d 12 (Fla. 1978) (Adkins, J., dissenting).

103. *State v. Kraham*, 360 So. 2d 393, 394 (Fla. 1978) (Adkins, J., dissenting).



they enter a forum in which openness as to those public aspects is crucial.<sup>104</sup> Good government requires a free exchange of ideas and individual accountability, and these things are made possible only by exposing current events to the sunshine.

## VI. Conclusion

Every decision of the Florida Supreme Court requires four concurring justices. During my eighteen years in Tallahassee I have served with nineteen justices, each with a different philosophy and many with views in direct conflict with my own. We met about once a week in conference to reconsider these differences and exchange our views. The opinions I authored were the result of a hearty exchange of ideas and suggestions with the other justices.

Sid White, our clerk, is the only person I know of who was capable of getting along with all nineteen justices. I have never heard a justice harshly criticize Sid. I have great admiration for his skillful diplomacy.

I have also had the benefit of the views and philosophy of twenty-eight aides and many interns from the College of Law at Florida State University. My written opinions have been flavored with ideas furnished by all the justices, aides and interns.

This was an ideal time to serve. Chief Justice B. K. Roberts gave me the responsibility of bringing the judiciary into its own under the newly adopted article V of our constitution. I worked with court clerks, the backbone of the judiciary, and county judges, its picture window.

Today the courts are more accessible to the people. God has answered my daily prayer that I be given the ability to use every talent I possess for the benefit of others.

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104. Cf. *Shevin v. Byron, Harless, Schaffer*, 379 So. 2d 633, 641 (Fla. 1980) (Adkins, J., dissenting).